

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-3938

UNITED STATES OF AMERICA

v.

DONALD LAMAR BURROUGHS,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No. 1-08-cr-00435-002)
District Judge: Hon. Sylvia H. Rambo

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 22, 2010

BEFORE: SMITH, FISHER, and COWEN, Circuit Judges

(Filed: July 13, 2010)

OPINION

COWEN, Circuit Judge

Donald Lamar Burroughs has appealed his sentence and his counsel has moved, pursuant to *Anders v. California*, 386 U.S. 738 (1967), for permission to withdraw as counsel. We will affirm Burroughs' sentence and grant the motion of counsel.

I. BACKGROUND

Burroughs pleaded guilty to one count of distribution and possession with intent to distribute five grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(iii), and 18 U.S.C. § 2. The PSR recommended an advisory guidelines range of 87-108 months of imprisonment. Burroughs filed objections and the District Court held a sentencing hearing. At the conclusion of the hearing, the District Court sentenced Burroughs to a term of imprisonment of fifty months. In reaching this sentence, the District Court sustained Burroughs' objection to a two-level enhancement for possession of a dangerous weapon (U.S.S.G. § 2D1.1(b)(1)), granted Burroughs' request for "safety valve" protection, granted a downward variance based on the government's acknowledgment of Burroughs' substantial assistance as set forth in its 5K1.1 letter, and granted a downward departure based on the crack cocaine-powder cocaine disparity.

II. DISCUSSION

Burroughs' counsel petitions this Court to withdraw as attorney of record, arguing that there are no non-frivolous issues that can be advanced on appeal. Counsel provided a copy of his brief to Burroughs and we gave Burroughs thirty days to file a brief on his behalf. Burroughs has not filed anything with this Court.

We engage in a two-step inquiry when evaluating an *Anders* brief. First, we determine whether counsel thoroughly examined the record for appealable issues and

adequately explained why any such issues are frivolous. Second, we conduct an independent review of the record to determine whether there are any non-frivolous issues. *See, e.g., United States v. Youla*, 241 F.3d 296, 300 (3d Cir. 2001). Counsel reviewed the record and concluded that there were no appealable issues with respect to the reasonableness of the sentence. Indeed, counsel noted that Burroughs prevailed on each of his objections and requests with respect to sentencing, which resulted in a significantly lower sentence that was below the advisory guidelines range. Likewise, our independent review of the record indicates that there are no non-frivolous issues for appeal. The District Court did not abuse its discretion in sentencing Burroughs to a below the guidelines sentence.

III. CONCLUSION

We will affirm the judgment of September 30, 2009, and grant the motion for counsel to withdraw.